

1 H. TIM HOFFMAN (STATE BAR NO. 49141)
ARTHUR W. LAZEAR (STATE BAR NO. 83603)
2 MORGAN M. MACK (STATE BAR NO. 212659)
HOFFMAN & LAZEAR
3 180 Grand Avenue, Suite 1550
Oakland, CA 94612
4 Telephone: (510) 763-5700; Facsimile: (510) 835-1311

5 NEWMAN STRAWBRIDGE (STATE BAR NO. 171360)
LAW OFFICE OF NEWMAN STRAWBRIDGE
6 719 Orchard Street
Santa Rosa, CA 95404
7 Telephone: (707) 523-3377; Facsimile: (707) 573-1094

8 CAMERON CUNNINGHAM (STATE BAR NO. 75593)
LAW OFFICE OF CAMERON CUNNINGHAM
9 719 Orchard Street
Santa Rosa, CA 95404
10 Telephone: (707) 829-9194; Facsimile: (707) 573-1094

11 Attorneys for Plfs. Brian King and Dawn Cone

12 LYNNE C. HERMLE (STATE BAR NO. 99779)
ORRICK, HERRINGTON & SUTCLIFFE LLP
13 1000 Marsh Road
Menlo Park, CA 94025
14 Telephone: (650) 614-7400; Facsimile: (650) 614-7401

15 JULIE A. TOTTEN (STATE BAR NO. 166470)
SARA E. DIONNE (STATE BAR NO. 221326)
16 ORRICK, HERRINGTON & SUTCLIFFE LLP
400 Capitol Mall, Suite 3000
17 Sacramento, CA 95814-4497
18 Telephone: (916) 447-9200; Facsimile: (916) 329-4900

19 Attorneys for Defendant Luxottica Retail North America, Inc.

20 UNITED STATES DISTRICT COURT
21 NORTHERN DISTRICT OF CALIFORNIA
22

23 BRIAN KING, MATTHEW SMELSER and
24 DAWN CONE, individuals, on behalf of
themselves and all other similarly situated,
25 Plaintiffs,

26 v.

27 LENSRAFTERS, INC. LUXOTTICA
GROUP S.P.A. AND Does 1 through 100.
28 Defendants.

Case No. 3:09-cv-03081-SI

**JOINT CASE MANAGEMENT
STATEMENT**

The parties, Plaintiffs Brian King, Matthew Smelser and Dawn Cone (“Plaintiffs”) and Defendant Luxottica Retail North America, Inc. (improperly sued as LensCrafters, Inc.) (“Defendant”), by and through their undersigned counsel, jointly submit this Joint Case Management Statement in anticipation of the Case Management Conference pursuant to the Court’s Civil Pretrial Order dated November 20, 2009 and Civil Local Rule 16-10 (d).¹

I. JURISDICTION AND SERVICE

The parties have no new issues to report.

II. FACTS

The parties have no new issues to report.

III. LEGAL ISSUES

The court previously stayed this matter pending a determination of final approval in the *Martinez v. Lenscrafters, Inc.*, C08-01699 (“*Martinez*”) matter. Final approval was granted in *Martinez* on April 15, 2010. Plaintiffs did not opt out of the settlement. Accordingly, Defendant contends that Plaintiffs’ claims are now barred. The parties have met and conferred regarding this issue and have reached an agreement to settle the matter in its entirety. At this time, the parties are still in the process of finalizing the settlement paperwork and they will file a stipulation of dismissal once the settlement is finalized.

IV. MOTIONS

Defendant continues to believe that if this matter proceeds forward, it may be subject to binding arbitration.

V. AMENDMENT OF PLEADINGS

On September 10, 2009, Plaintiffs filed a First Amended Complaint. If the settlement is not finalized, Plaintiffs anticipate filing a Second Amended Complaint. Defendant’s response to the First Amended Complaint was initially stipulated to be due on March 12, 2010, but that deadline was subject to the stay in the action. In the event that settlement does not become final and Plaintiffs intend to pursue this action, the parties and Court need to set a new deadline either

¹ Luxottica Group SpA has not been served in this action and is not a party to this statement. Plaintiffs have represented that they intend to drop Luxottica Group SpA as a party to this action.

for response to Plaintiffs' First Amended Complaint or for Plaintiffs to file their Second Amended Complaint.

VI. EVIDENCE PRESERVATION

The parties have no new issues to report.

VII. DISCLOSURES

The parties have no new issues to report.

VIII. DISCOVERY

The parties have no new issues to report.

IX. CLASS ACTIONS

The parties have no new issues to report.

X. RELATED CASES

The parties have no new issues to report.

XI. RELIEF

The parties have no new issues to report.

XII. SETTLEMENT AND ADR

As noted above, the parties have reached an agreement to settle this matter. The parties advised the Early Neutral Evaluator of this settlement on June 16, 2010.

XIII. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES

The parties have no new issues to report.

XIV. OTHER REFERENCES

The parties have no new issues to report.

XV. NARROWING OF ISSUES

The parties have no new issues to report.

XVI. EXPEDITED SCHEDULE

The parties have no new issues to report.

XVII. SCHEDULING

The parties have no new issues to report.

///

XVIII. TRIAL

The parties have no new issues to report.

XIX. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS

The parties have no new issues to report.

XX. OTHER MATTERS

The parties have no new issues to report.

Pursuant to General Order No. 45, Orrick, Herrington & Sutcliffe LLP attests that concurrence in the filing of the document has been obtained from the other signatories which shall serve in lieu of their signatures on the document.

Dated: June 25, 2010

H. TIM HOFFMAN
ARTHUR W. LAZEAR
MORGAN M. MACK
Hoffman & Lazear

/s/ Morgan M. Mack

MORGAN M. MACK
Attorneys for Plaintiffs
BRIAN KING & DAWN CONE

Dated: June 25, 2010

LYNNE C. HERMLE
JULIE A. TOTTEN
SARA E. DIONNE
Orrick, Herrington & Sutcliffe LLP

/s/ Julie A. Totten

JULIE A. TOTTEN
Attorneys for Defendant
LUXOTTICA RETAIL NORTH AMERICA,
INC.